REMARKS

The Office Action of February 23, 2005, has been received and reviewed. Claims 1-7, 10, and 12-16 are currently under examination. Claims 17, 21 and 22, while withdrawn, may be subject to rejoinder. All claim amendments are made without prejudice or disclaimer. Reconsideration is respectfully requested.

Rejoinder:

The applicants acknowledge the telephonic election of herpes simplex virus as the species. The applicants further thank the Examiner for acknowledgement that claims 17, 21 and 22, Group II, may be rejoined upon allowance of a linking claim (page 3 of the Office Action).

New claim 24 reads on Group I and should be under examination.

Support for the Claim Amendments:

Support for new claim 24 can be found throughout the specification, for example, in withdrawn claim 23 and paragraph [0009] of the specification.

Support for the amendments to claims 1, 3, 8-11 and 17 can be found throughout the specification and claims, for example, in paragraphs [0008] and [0009] of the specification.

The amendments do not add new matter.

Rejection under 35 U.S.C. § 101:

Claims 1-7, 10, and 12-16 stand rejected under 35 U.S.C. § 101, as assertedly lacking utility commensurate with the scope of the claims. Applicants respectfully submit that the rejection is inappropriate, since the Office acknowledges that the applicants have provided at least one credible utility, which is sufficient to support the claims. However, to expedite prosecution, the claims have been amended to recite identification of compounds with anti-viral activity, which is acknowledged to be a credible utility. In light of the amendments, reconsideration and withdrawal of the rejection are respectfully requested.

Rejection under 35 U.S.C. § 112, second paragraph:

Claim 7 stands rejected under 35 U.S.C. § 112, second paragraph, as assertedly failing to further define claim 1. Claim 7 has been amended to recite that the "cell further comprises a nucleic acid encoding an adenovirus E2 protein," thereby adding an additional element to claim 1 and clarifying the claims. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection under 35 U.S.C. § 103:

Claims 1-7, 10, 12, 13, and 16 stand rejected under 35 U.S.C. § 103 as assertedly being unpatentable over Burk *et al.* in view of Hateboer *et al.*

Claims 1-7, 10, 12-14, and 16 stand rejected under 35 U.S 103(a), as assertedly being unpatentable over Burk *et al.* and Hateboer *et al.* as applied to claims 1-3, 5-7, 12, 13, and 16, and further in view of Lin *et al.* (J Virol Methods 88: 219-25).

Claims 1-7, and 12-16 stand rejected under 35 U.S.C. 103(a), as assertedly being unpatentable over Burk *et al.* and Hateboer *et al.* as applied to claims 1-3, 5-7, 12, 13, and 16, and further in view of Halliday *et al.* (WO 99/5 1776).

The applicants respectfully traverse the rejections for at least the following reasons. Each rejection relies on the combination of Burk *et al.* in view of Hateboer *et al.*, therefore, the applicants traverse the rejection based on this combination of references. It is to be understood that the additional references Halliday *et al.* and and Lin *et al.* do not add the missing elements asserted to be present in the combination of Burk *et al.* and Hateboer *et al.* Therefore, the applicants traverse the rejection based on this core combination, with the understanding that further discussion of Halliday *et al.* and Lin *et al.* is unnecessary.

The Office acknowledges that Burk *et al.* fails to disclose or suggest the use of a cell expressing an adenoviral E1 protein. The Office then asserts that because the cells of Burk *et al.* are similar to the cells of Hateboer *et al.* it would be obvious to a person of ordinary skill in the art that the cells of Hateboer *et al.* could be used in the method of Burk *et al.*

Applicants respectfully traverse the rejection, since Hateboer *et al.* does not show that adenovirus E1 immortalized cells can be used to propagate viruses other than adenoviruses. However, Hateboer provides no disclosure or suggestion that the E1-immortalized cells can be used for the production of viruses other than adenoviruses. Hateboer *et al.* only discloses that such cells can be used for the production of recombinant proteins by the introduction of nucleic acids through an adenovirus. At the time of filing, only adenoviruses were thought to be able to infect and propagate in the E1-immortalized cells, and Hateboer does not teach that E1-immortalized cells are susceptible to infection and propagation of viruses such as herpes simplex virus, influenza, measles, etc. Since neither Burk *et al.* nor Hateboer *et al.*, either alone or in combination[1], teach that the E1-immortalized cells could sustain viral infections (other than adenovirus infections), neither Hateboer *et al.* nor Burk *et al.*, either alone or in combination, teach or suggest the use of E1-immortalized cells for the purpose of studying the life cycle of an unrelated virus. Therefore, Hateboer *et al.* cannot be properly combined with Burk *et al.* to form a proper obviousness rejection, as the skilled person would not use the cells from Hateboer *et al.* for the methods claimed, namely to identify compounds that inhibit a viral life cycle phase. In the absence of at least a teaching that E1-immortalized cells are capable of sustaining a life cycle phase of an unrelated virus, the person of ordinary skill in the art would have no motivation to combine the references. Reconsideration and withdrawal of the rejection are thus respectfully requested.

[1] Including, in combination with either Halliday *et al.* or Lin *et al.*

CONCLUSION

At least claims 1-7, 10, and 12-16 should be in condition for allowance. Should questions remain after entry of the amendments and consideration of the remarks herein that may be addressed by a telephone conference, the Office is kindly invited to contact the applicants' representative at the number provided herein.

Respectfully submitted,

G. Scott Dorland, Ph.D.
Registration No. 51,622
Attorney for Applicants
TRASKBRITT, P.C.
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922
Facsimile: 801-531-9168

Date: June 22, 2005
GSD/gsd